IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 10760 of 2004

Between:

1 Union of India rep.by the Secretary, Railway Board, Rail Bhavan,

New Delhi.
2 The General Manager, South Central Railway, Rail Nilayam,

Secunderabad.
3 The Deputy Controller of stores, South Central Railway, Rail

Nilayam, Secunderabad.

..... PETITIONERS

AND

A.S.Ramachandran, S/o.A.S.Sri Ramulu,
South Central Railway, R/o.H.No.11/3-392/2/12,
Srinivasanagar, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate writ or order or direction in the nature of the writ under Article 226 of the Constitution of India calling for the records relating to and connected with the order dated 03-03-2004 rendered in O.A.1340 of 2002 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as it is contrary to law and pass.

Counsel for the Petitioners: Sri S.R.ASHOK for

MR.C.V.VINITHA REDDY

Counsel for the Respondent: MS.S.ANURADHA

The Court made the following:

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE GODA RAGHURAM

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W.P.NO.10760 OF 2004

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ORDER: (PER THE HON'BLE SRI JUSTICE J.CHELAMESWAR)

Heard the learned senior counsel for the petitioners Sri S.R.Ashok and learned counsel for the respondent Ms. S.Anuradha.

The first petitioner is the Union of India and the other two petitioners are various authorities under the control of the South Central Railway. The respondent herein was an employee with the second petitioner.

The respondent was working as Office Superintendent Grade-I in the office of the Chief Controller of Stores, South Central Railway, Rail Nilayam, Secunderabad. While so, a charge sheet dated 22.05.2997 was issued containing three charges, the details of which are not necessary for the purpose of this writ petition. Suffice to say that the charges relate to the failure on the part of the respondent to supervise the stores, thereby resulting in loss of Rs.3,00,000/- (approximately) to the employer. It appears that the charge sheet did not reach a logical conclusion for quiet some time. But the respondent retired on 31.05.1997, on superannuation. In view of the fact the enquiry was pending, pensionary benefits of the second respondent were not paid. Therefore, he approached the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal') in O.A.No.946 of 2001. By order dated

13.06.2002, the above mentioned O.A was disposed of by the Tribunal directing that a final decision be taken in the matter of pending disciplinary enquiry against the respondent, within a period of three months and depending on the decision to be reached, the pensionary benefits of the respondent be paid in tune with such final decision. It appears that the petitioners could not take a final decision within the stipulated period of three months. A decision was taken finally on 09.01.2003, wherein the respondent was imposed a penalty of 20% cut in pension for a period of five years. The said decision of the petitioners was challenged by the respondent again in O.A.No.1340 of 2002 on the file of the Central Administrative Tribunal, Hyderabad Bench. By the impugned order dated 03.03.2004, the Tribunal held that the disciplinary proceedings against the respondent are "deemed to have been abandoned" and "non-est in the eye of law" and further declared that the order dated 09.01.2003 is set aside, with a consequential direction to pay all the pensionary benefits to the respondent herein, which are due to him together with 10% interest for the delayed payment. Challenging the same, the present writ petition is filed.

The learned senior counsel Sri S.R.Ashok appearing for the petitioners argued that the period of three months stipulated in the order dated 13.06.2002 by the Tribunal while disposing of the O.A.No.946 of 2001, is not a mandatory prescription of law so as to invalidate the disciplinary proceedings, which continued beyond the stipulated period.

In the reply affidavit filed on behalf of the respondent in M.A.No.124 of 2003 in O.A.No.1340 of 2002 before the Tribunal, the petitioners explained the delayed conduct of the disciplinary proceedings in the following language:

> "Immediately on receipt of a copy of the Hon'ble Tribunal's Judgment dt.13.06.2002, the Railway Board was addressed to communicate the decision of the President. Thereafter, on constant persuasion by the Board with the UPSC, the UPSC tendered their advice in the disciplinary case of the applicant to the Railway Board on 20.12.2002 and the President's Order was communicated by the Railway Board on 9.01.2003 i.e., within 20 days of the UPSC's advice. Though the procedure of studying the UPSC's advice critically and putting up to the President

through various authorities in the hierarchy is time consuming, the fact that the orders of the President were passed and communicated within 20 days of UPSC's advice amply reflects the concern of the respondents for expeditious disposal of the disciplinary case and the regard shown to comply within the time frame specified by this Hon'ble Tribunal. It is submitted that the President had considered the disciplinary case of the applicant in consultation with the U.P.S.C. and decided that a penalty of 20% cut in pension for a period of five years be imposed on him. The President's Order No.E(D&A)2000 AE 8-14 dated 9.1.2003 along with U.P.S.C.'s advice No.F.3/141/2002/I dated 20.12.2002 was communicated to the applicant under reference No.P.90/DAR/HQ/ASR/70/2000 dated 3.2.2003."

Learned counsel for the petitioners has also brought to our notice a judgment of the Supreme Court reported in ***STATE OF PUNJAB AND OTHERS v. CHAMAN LAL GOYAL,*** which was subsequently quoted with the approval in a later decision of the Supreme Court reported in ***STATE OF ANDHRA PRADESH V. N.RADHAKRISHNAN*** **.** In the latter decision, the Supreme Court dealing with this aspect of the matter held as follows:

"18. In *State of Punjab and others v. Chaman Lal Goyal*, 1995 (2) SCC 570, State of Punjab was aggrieved by the order of the High Court of Punjab and Haryana quashing memo of charges against Goyal and also the order appointing Inquiry Officer to inquire into those charges. In this case the incident, which was the subject-matter of charge, happened in December, 1986 and in early January, 1987, when Goyal was working as Supdt. of Nabha High Security Jail. It was only on July 9, 1992 that Memo of charges was issued to Goyal. He submitted his explanation of January 4, 1993 denying the charges. Inquiry Officer was appointed on July 20, 1993 and soon thereafter Goyal filed writ petition in the High Court on August 24, 1993. The High Court quashed the memo of charges on the principal ground of delay of five and a half years in serving the memo of charges, for which there was no acceptable explanation. This Court examined the factual position as to how the delay occurred and if Goyal had been prejudiced in any way on account of delay. This Court relied on the principles laid down in *A.R.Antulay v. R.S.Nayak,* 1992 (1) SCC 225, and said that though that case pertained to criminal prosecution the principles enunciated therein were broadly applicable to the plea of delay in taking the disciplinary proceedings as well. Referring to decision in *A.R.Antulay* case this Court said:

"In paragraph 86 of the judgment, this Court mentioned the

propositions emerging from the several decisions considered therein and observed that “ultimately the Court has to balance and weigh the several relevant factors - balancing test or balancing process – and determine in each case whether the right to speedy trial has been denied in a given case”. It has also been held that, ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that is not the only course open to the Court and that in a given case, the nature of the offence and other circumstances may be such that quashing the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the Court to make such other appropriate order as it finds just and equitable in the circumstances of the case.”

In that case this Court said that it was more appropriate and in interest of justice as well as in the interest of administration that inquiry which had proceeded to a large extent be allowed to be completed. At the same time the Court directed that Goyal should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the enquiry, if he is found fit for promotion.

19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to taken into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the Rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed

> to take their course as per relevant Rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

From a reading of the above two paragraphs, it appears that it is not possible to draw any hard and fast rule to say that wherever the time stipulated by judicial body to expeditiously conclude the disciplinary enquiry is not adhered to, it must automatically be held that the continuation of the enquiry is illegal, nor it is the conclusion of the Supreme Court that wherever there is a long delay in the disciplinary proceedings, that prolonged continuation of the disciplinary proceedings defeats justice, and therefore, they must be held to be invalid. The Court held that various factors are required to be taken into consideration to come to the conclusion that such long pendency of the disciplinary proceedings would defeat the ends of justice insofar as the employee is concerned. One of the relevant factors as can be seen from the above extract is the stage, at which these proceedings were pending on the date of the adjudication.

The Supreme Court in the case of ***Chaman Lal Goyal*** **(1 supra)** held that though the proceedings were pending for a long time, having regard to the fact that the enquiry has proceeded to a large extent, it may not be in the interest of the administration to declare at that stage that the pendency would result in defeat of justice. Ultimately, it all depends on the nature of the investigation that is required to be conducted which determines the appropriateness of the duration of the disciplinary proceedings. Apart from that, in a matter like the present case, even after the conclusion of the enquiry, if a body like Union Public Service Commission or some other body is required to be consulted before taking a final decision, such a process itself would take some time. These are all the relevant factors (though not exhaustive), which are required to be taken into consideration while dealing with the question like the one before us.

In view of the fact that the Tribunal by its order dated 13.06.2002, thought it fit to permit the petitioners to conclude the enquiry within a period of three months, thereafter, in view of the explanation offered by the petitioners, the details of which are already extracted above, as to various steps taken and the time consumed to take such final decision, we are of the opinion that the delay of three months in concluding the enquiry against the respondent would not result in denial of justice to him. We, therefore, set aside the impugned order dated 03.03.2004 passed in O.A.No.1340 of 2002.

We would like to record our appreciation of the assistance rendered by the learned counsel for the respondent.

Accordingly, the writ petition is allowed. No costs.

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J.CHELAMESWAR, J

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GODA RAGHURAM, J

Dated 29th July, 2004.

YCR/GJ

To

1 The Secretary, Union of India, Railway Board, Rail Bhavan,

New Delhi.

2 The General Manager, South Central Railway, Rail Nilayam,

Secunderabad.

3 The Deputy Controller of stores, South Central Railway, Rail

Nilayam, Secunderabad.

4. 2 C.D. copies.